IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9265 OF 2004

Ramawadh Jagannath Karus. ... Petitioner.

Versus

The Municipal Corporation of Greater Bombay..... ..... Respondent.

-: ALONG WITH :-

WRIT PETITION NO. 9276 OF 2004

Shantilal R. Karus. ... . Petitioner.

Versus

The Municipal Corporation of Greater Bombay. ... ... Respondent.

-: ALONG WITH :-

WRIT PETITION NO. 9272 OF 2004

Haripal Durjan Rajbhar..... .... Petitioner.

Versus

The Municipal Corporation of Greater Bombay. ... ... Respondent.

-: ALONG WITH :-

WRIT PETITION NO. 9271 OF 2004

Pyarelal Harilal Jaiswal... .... Petitioner.

Versus

The Municipal Corporation of Greater Bombay. ... ... Respondent.

Mr. S. J. Ghogare for the Petitioners.

Mr. N. V. Walawalkar for the Respondent.

-: ALONG WITH :-

WRIT PETITION NO. 9768 OF 2004

Usha Ganpat Khond & Ors.... .... Petitioners.

Versus

The Municipal Corporation of Greater Mumbai and Anr.... ... . Respondents.

Mr. Atul Rajadhyaksha with Mr. V. S. Lonkar for the Petitioners.

Mr. N. V. Walawalkar for Respondent No.1.

Mr. A. S.Khandeparkar for Respondent No.2.

CORAM : S. A. BOBDE, J.

DATED : 10TH MARCH, 2005.

P.C.:

These petitions involve common facts and questions of law and therefore are being disposed of by this common order.

2. The petitioners in these cases have impugned the order of the Municipal Corporation of Greater Mumbai

passed under Section 105-B of the Bombay Municipal Corporation Act, 1888 which empowers the Commissioner to evict any person in unauthorised occupation of any Corporation premises. There is no dispute that the premises are Corporation premises. Each of the petitioner claims to have been residing in Corporation premises. There is no dispute that the petitioner used to tether their bullocks and use the Corporation premises for parking their bullock-carts. The dispute is as to whether the petitioners were also residing in the premises.

3. The litigation has a chequered history. The present round of litigation arises out of an enquiry conducted subsequent to an order of this Court passed on 1st February, 1991 by Daud, J. in Writ Petition No. 475 of 1986. This Court found the eviction illegal and therefore considered it appropriate to direct a proper inquiry into the matter. In short, this Court directed the Corporation to conduct the proper inquiry to ascertain which of the petitioner was in occupation of which part, if any, of the Corporation premises known as Ghaswala Compound for the purpose of residence. Subject to that being established, this Court passed an order that the

petitioners would be entitled to alternate accommodation and that too only for the purpose of human residence.

4. Pursuant thereto, an inquiry bearing Enquiry No. FS/76 of 1997 was conducted in respect of each of the petitioners covered by the petition being dealt with herein. The Enquiry Officer found that the petitioners failed to produce any documentary evidence such as ration card, electricity bills, etc. in support of their claim of residence and rejected the contention that they resided in the premises. He, therefore, ordered an inquiry under Section 105-B(1) of the Bombay Municipal Corporation Act, 1888.

5. Aggrieved, the petitioners preferred statutory appeals under the provisions of the Bombay Municipal Corporation Act, 1888 before the City Civil Court at Bombay. The learned Principal Judge of the City Civil Court has upheld the order of the Enquiry Officer.

6. M/s. Ghogare and Rajadhyaksha, learned Counsel appearing for the petitioners, strongly urged that the orders are illegal and improper and deserve to be set aside.

7. Mr. Ghogare, learned Counsel for the petitioners, submitted that the Enquiry Officer has not come to a categorical finding that the petitioners represented by him did not use the premises for human residence. This submission is not correct since there is a clear finding to the effect based on evidence. He next submitted that the Enquiry Officer's order under Section 105-B of the Act is vitiated by the fact that he has not considered the aspect of alternate accommodation but has held that he has no jurisdiction to provide for alternate accommodation. This according to the learned Counsel is in breach of the order of this Court in the aforesaid writ petition decided by Daud, J. This submission is also not correct. Indeed, Section 105 does not cast any obligation on the Commissioner to consider grant of alternate accommodation. This question of whether alternate accommodation is to be granted or not is a matter of policy of the Municipal Corporation for Greater Bombay. In any case, this Court did not direct the grant of alternate accommodation in case the petitioners were found liable for eviction. What this Court directed was that in case it was found that the petitioners have been occupying the premises as

residence then their case for alternate accommodation may be considered.

8. Mr. Rajadhyaksha, learned Counsel appearing for the petitioners in Writ Petition No.9768 of 2004, submitted that the order of the Enquiry Officer is vitiated by the fact that a clear admission on the part of one of the witnesses of the Corporation i.e. one Mr. Jainwal has been ignored. Mr. Jainmal in the course of his cross-examination admitted that the Opponents namely, the petitioners, were using the premises for tethering bullocks and for residence. Learned Counsel emphasises the admission as regards residence. There is no doubt that there is such a statement in the cross-examination. However, it is clear that the Enquiry Officer has decided the matter on a hearing and perusal of the entire evidence which includes oral and documentary evidence. Considering the effect of a single statement in cross-examination would amount to a re-appreciation of evidence as if it were being done in appeal, which I do not propose to do in writ petition. The statement in any case does not appear to be specific as to the period about which it is made. An entire reading of the order of the Enquiry Officer clearly shows that the Enquiry Officer

has gone into the entire evidence as well as documents and has principally based his order on the failure of the petitioners to produce any documentary evidence such as ration card, electricity bills, etc. which would obviously exist if a person actually resided in the premises. What degree of weight needs to be given to which statement is in the realm of adequacy and sufficiency of evidence which would not be proper for a writ court to enter into.

9. Moreover, Mr. Walawalkar, learned Counsel appearing for the Corporation has pointed out, and in my view rightly, that in appeal the learned Principal Judge of the City Civil Court at Bombay has dealt with the question of each of the petitioners case by case. In fact from paragraph 23 onwards vide judgment and order in Misc. Appeal No. 150 of 2003 dated 28th October, 2004, the learned Appellate Court has dealt with the individual cases of each of the petitioner. On the basis of the evidence regarding each of them, the Appellate Court has come to the conclusion that the petitioners did not use the premises prior to the year 1986 for human residence.

10. In this view of the matter and having regard to

the fact that the petitioners' case has been dealt with on the basis of the evidence produced by them, I am not inclined to reverse the order because of a single sentence in cross-examination made by one of the witnesses for the Corporation. There is, therefore, no merit in these writ petitions.

11. At this juncture, having regard to the fact that it is a human problem and the fact that the petitioners have been in occupation of the premises, although unauthorizedly, I consider it appropriate to direct the Municipal Corporation to consider any representation which the petitioners may make for the purpose of alternate accommodation or rehabilitation. The petitioners may make such representation within a period of two weeks. If such a representation is made, the Corporation shall decide the same within a period of four weeks thereafter. While deciding the representations, the Corporation will bear in mind their policy and the fact that they are dealing with a human problem and a matter affecting the livelihood of poor people. In case, the Corporation rejects the representation of the petitioners, they shall not take any action for the forcible eviction of the petitioners for a period of four weeks from the date

of service of such order on the petitioners.

12. With the above directions, the writ petitions are dismissed.

Sd/-

(**S. A. BOBDE, J.**)